

**WOHL & FRUCHTER** LLP

570 LEXINGTON AVENUE, 16TH FLOOR  
NEW YORK, NY 10022

T 212 758 4000

F 212 758 4004

www.wohlfruchter.com

ETHAN D. WOHL

direct 212 758 4097

ewohl@wohlfruchter.com

November 16, 2015

**BY FACSIMILE**

Hon. Victor Marrero  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

Re: *SEC v. CR Intrinsic Investors, LLC*, No. 12 Civ. 8466 (VM)

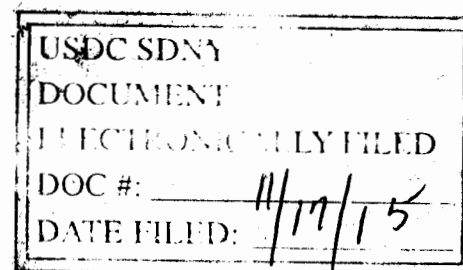
Dear Judge Marrero:

We write on behalf of the Lead Plaintiffs in *Kaplan v. S.A.C. Capital Advisors, L.P.*, No. 12 Civ. 9350 (VM) (KNF), a related class action on behalf of investors in Elan Corporation, plc, to request the Court (1) set a deadline for submission by the SEC of a Fair Fund distribution plan, and (2) set a schedule for comments thereon.

The Court entered an Order establishing a Fair Fund on January 26, 2015 (Dkt. No. 84), and we have been in regular contact with counsel for the SEC since that time. The SEC originally expected to submit its distribution plan over the summer, and the anticipated submission date has now been extended several times. As of last Friday, counsel were unable to provide a firm date by which the plan would be submitted. More than 9½ months have now passed since the Court ordered the creation of a Fair Fund, and we submit that setting a firm deadline for filing a proposed distribution plan is now warranted.

With respect to comments on the plan, counsel for the SEC has advised us that it is not the Commission's policy to entertain comments on Fair Fund distribution plans prior to submission to the Court, and the Commission would not take any position concerning whether the Court should allow submissions by interested parties, or on any proposed schedule for such submissions.

The Second Circuit has previously held that investors have standing to be heard with respect to a proposed SEC distribution plan in an insider trading case, *see SEC v. Certain Unknown Purchasers of the Common Stock of and Call Options for the Common Stock of Santa Fe Int'l Corp.*, 817 F.2d 1018, 1021 n.1 (2d Cir. 1987), and Lead Plaintiffs submit that they and other



Hon. Victor Marrero  
November 16, 2015  
Page 2

WOHL & FRUCHTER <sup>LLP</sup>

interested parties should be afforded a reasonable opportunity to review the proposed plan, and submit any comments.


We propose that submissions from interested parties be due 10 days after filing of the proposed distribution plan and that responses from the SEC be due 7 days thereafter.

Respectfully submitted,



Ethan D. Wohl

cc: All Counsel of Record (via email)

The SEC <sup>LS</sup> directed to respond	
by <u>11-23-15</u> by letter not to exceed <u>three</u>	
<u>(3)</u> pages, to the matter set forth above by	
<u>Lead Plaintiffs</u> , showing cause why	
the relief requested should not be granted.	
SO ORDERED.	
DATE <u>11-17-15</u>	
VICTOR MARRERO, U.S.D.J.	